

County Council Of Howard County, Maryland

2005 Legislative Session

Legislative Day No. 1

Resolution No. 10 -2005

Introduced by: The Chairman at the request of the County Executive

A RESOLUTION approving the terms and conditions of a Payment in Lieu of Taxes Agreement by and between Howard County Housing Commission and Howard County, Maryland for 50 lots located in New Colony Village in Elkridge, Howard County, Maryland.

Introduced and read first time _____, 2005.

By order _____
Sheila M. Tolliver, Administrator

Read for a second time at a public hearing on _____, 2005.

By order _____
Sheila M. Tolliver, Administrator

This Resolution was read the third time and was Adopted__, Adopted with amendments__, Failed__, Withdrawn__, by the County Council on _____, 2005.

Certified By _____
Sheila M. Tolliver, Administrator

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN ALL CAPITALS indicates additions to existing law; Strike-out indicates material deleted by amendment; Underlining indicates material added by amendment

1 **WHEREAS**, the Howard County Housing Commission (the “Commission”) has
2 contracted with Corridor I Limited Partnership (the “Partnership”) to buy 50 lots in New Colony
3 Village in Elkridge, Howard County, Maryland (collectively, the “Property”); and
4

5 **WHEREAS**, the Commission will finance the purchase of the Property through a private
6 bank loan and a take-back mortgage from the Partnership, to be used pursuant to the moderate
7 income housing unit program set forth in Title 13 of the Howard County Code (the “Code”); and
8

9 **WHEREAS**, in accordance with the Code, the Property will provide housing for low and
10 moderate income persons and will operate on a non-profit basis; and
11

12 **WHEREAS**, the Commission has requested that the County permit it to make payments
13 in lieu of taxes pursuant to Section 7-505 of the Tax-Property Article of the Annotated Code of
14 Maryland; and
15

16 **WHEREAS**, the Commission has demonstrated to the County that an agreement for
17 payments in lieu of taxes is necessary to make the project economically feasible; and
18

19 **WHEREAS**, in order to induce the Commission to provide affordable housing in
20 Howard County, it is in the interest of the County to accept payments in lieu of County real
21 property taxes subject to the terms and conditions of the Payment in Lieu of Taxes Agreement
22 attached to this Resolution as “Exhibit 1”.
23

24 **NOW, THEREFORE, BE IT RESOLVED** by the County Council of Howard County,
25 Maryland this ____ day of _____, 2005, that:

- 26 (1) In accordance with Section 7-505 of the Tax-Property Article of the Annotated Code of
27 Maryland, the County shall accept payments in lieu of County real property taxes for the
28 50 lots located in New Colony Village to be identified in Exhibit A to the Payment in
29 Lieu of Taxes Agreement attached to this Resolution as “Exhibit 1”.

1 (2) The County Executive is hereby authorized to execute and deliver the Payment in Lieu of
2 Taxes Agreement in the name and on behalf of the County in substantially the form
3 attached hereto as "Exhibit 1".

4 (3) The County Executive, prior to execution and delivery of the Payment in Lieu of Taxes
5 Agreement, is hereby authorized to identify the specific lots that constitute the Property
6 in Exhibit A to the Agreement and to make other such changes or modifications to the
7 Agreement as he deems appropriate in order to accomplish the purpose of the
8 transactions authorized by this Resolution, provided that such changes or modifications
9 shall be within the scope of the transactions authorized by this Resolution; and the
10 execution of the Agreement by the County Executive shall be conclusive evidence of the
11 approval by the County Executive of all changes or modifications to the Agreement, and
12 the Agreement shall thereupon become binding upon the County in accordance with its
13 terms.

FORM OF AGREEMENT

Project: New Colony Village

PAYMENT IN LIEU OF TAXES AGREEMENT

THIS AGREEMENT (this "Agreement") is made as of this ____ day of _____, 2005, by and between **HOWARD COUNTY HOUSING COMMISSION**, a public housing authority of the State of Maryland (the "Commission") and **HOWARD COUNTY, MARYLAND**, a body corporate and politic of the State of Maryland (the "County").

RECITALS

A. The Commission has contracted with Corridor I Limited Partnership (the "Partnership") to buy fifty (50) lots located in New Colony Village ("New Colony"), which real property is more particularly described as set forth in Exhibit A (the "Property"). The Commission proposes to acquire the Property to assist low and moderate income residents.

B. The Commission has applied to the Sandy Spring Bank (the "Lender") for a loan in the approximate amount of Two Million Five Hundred Sixty-Two Thousand Dollars (\$2,562,000) (the "Bank Loan") and to the Partnership for a take back mortgage in the amount of Two Hundred Fifty Thousand Dollars (\$250,000) (the "Partnership Loan") to fund the costs of acquiring the Property. Pursuant to Subtitle 4 of Title 13 of the Howard County Code (the "Code") the Property will provide housing for low and moderate income persons.

C. The Commission has requested that the County permit the Commission to make payments in lieu of County real property taxes pursuant to Section 7-505 of the Tax-Property Article of the Annotated Code of Maryland (the "Act"). The Act provides, among other things, that real property may be exempt from County property tax if:

(1) the real property is owned or leased by a person engaged in constructing or operating housing structures or projects;

(2) the structures and facilities of the real property are governmentally-controlled as to rents, charges, rates of return, and methods of operation so that the real property operates on a nonprofit basis; and

(3) the owner and the governing body of the county where the real property is located agree that the owner shall pay a negotiated amount in lieu of the applicable county property tax.

D. In order to assist the Commission in providing housing for low and moderate income persons, the County agrees to accept payments in lieu of County real property taxes due on the Property, subject to the terms and conditions of this Agreement.

E. The County Council of Howard County, Maryland has approved this Agreement by resolution, a copy of which is attached hereto as Exhibit "B".

NOW, THEREFORE, in consideration of the premises and the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby

acknowledged, the Partnership and the County agree as follows:

1. Definitions. In this Agreement the term:

(a) "Department" means the Department of Housing and Community Development.

(b) "Eligible Person" means either a low or moderate income resident currently occupying a Lot on the Property or a family of low or moderate income who purchases a Lot with a vacant home on the Property from the Commission.

(c) "Gross Rental Income" means the total of all charges paid by all tenants of the Property, less the cost of all utilities paid by the Commission.

(d) "Initial Closing" means the date of the initial closing transferring some or all of the Lots comprising the Property from the Partnership to the Commission.

(e) "Lot(s)" means one or more of the 50 lots identified on Exhibit A.

2. Effective Date. This Agreement shall take effect on the date of the Initial Closing (the "Effective Date"); provided, however, that if the Initial Closing has not occurred by April 30, 2005, this Agreement shall be null and void.

3. Term of Agreement. This Agreement shall be in effect beginning on the Effective Date and shall end on June 30, 2015, unless terminated on an earlier date, as provided in this Agreement, ("Termination Date").

4. Payment in Lieu of Taxes (PILOT) Payments.

(a) For the term of this Agreement, the Commission shall make, and the County shall accept, annual payments in lieu of all County real property taxes due on the Property, calculated and paid as provided in this Section 4. Any Lot set forth in Exhibit A shall be exempt from County real property taxes in accordance with the Act, and as provided in this Agreement.

(b) Amount of Payments in lieu of Taxes. The amount of the annual payment in lieu of taxes for the Property ("Annual Payment") shall be the sum of the amounts calculated individually for each Lot as follows:

(i) Lot Owned Solely by Commission. For each Lot that is owned solely by the Commission the amount due shall be \$ 293.85 ("Basic Lot Payment"). During the term of this Agreement and beginning with the tax year starting on July 1, 2005, and annually thereafter, the Basic Lot Payment shall be adjusted by adding 5% of amount due in the prior year, limited, however, so that the amount does not exceed County real property taxes which would be due if the Lot were owned by a private individual ("Actual County Taxes").

(ii) Lot in which Commission has interest. For each Lot that is owned by the Commission and an Eligible Person, ("Shared Equity Lot") the amount due, but not immediately payable, shall be an amount equal to the Actual County Taxes. The amount immediately payable shall be the Basic Lot Payment and the amount by which the Actual County Taxes exceeds the Basic Lot Payment ("Deferred Payment") shall be deferred, as provided in Subsection (c).

(c) Payment and Deferral. At the time and place set forth in Section 5, the Commission shall pay to the County the Basic Lot Payment for each Lot. The Deferred Payment portion of the Actual County Taxes on a Shared Equity Lot is deferred until such time as a Shared Equity Lot is transferred, voluntarily or by operation of law to a person other than the Commission. At the time of such transfer, whether during the term of the Agreement or subsequent to the Termination Date, the accumulated Deferred Payments shall become due and payable.

(d) Elimination of Lot from Property. Any Shared Equity Lot which is transferred, whether voluntarily or by operation of law to a person other than the Commission during the term of this Agreement, shall be eliminated from the Property subject to this Agreement, shall not be part of the calculation of the Annual Payment and shall be subject to Actual County Taxes.

5. Time and Place Payments Due. Each Payment shall be made by April 1 of each year for the prior calendar year. Payments shall be made to the Director of Finance, 3430 Courthouse Drive, Ellicott City, Maryland 21043. Payments of the assessments other than the County real property tax, such as the County fire tax, front-foot benefit assessment charge and *ad valorem* charge, shall be made at the time and in the manner provided by law.

6. Penalties for Late Payment. The Commission shall be subject to the following penalties for late payments:

(a) 1% per month or part of a month during the period April 2 to June 30 following the due date; and

(b) 1 1/2% per month or part of a month on or after July 1 following the due date.

7. Penalties for Failure to Pay. At the option of the County, if any Payment is due and unpaid on or after July 1 following the due date, this Agreement may be terminated and all County real property taxes for the preceding taxable year shall be immediately due and payable.

8. Reports and Records.

(a) By no later than April 1 of each year, the Commission shall submit to the County, in a form acceptable to the County, a report of the Property's income and expenses for the preceding calendar year, including an itemized breakdown of Gross Rental Income.

(b) The Commission shall provide the Department with a certified statement of eligibility of each resident occupying the Property, the amount of payment required and the full amount due. Such report will be reviewed by the Director of the Department and forwarded to the Director of Finance.

(c) Each report shall include the amount of taxes which have been deferred.

(d) The Commission shall submit such other reports as the County may reasonably require in order to verify the Commission's compliance with this Agreement.

(e) The Commission shall permit the County or any of its authorized agents to inspect the records of the Property in order to verify the Commission's compliance with this Agreement.

9. Representations and Warranties.

(a) The Commission represents and warrants to the County that it is eligible in all respects to enter into this Agreement to make payments in lieu of taxes under the Act.

(b) The Commission covenants and agrees that it will do all things necessary to remain eligible to make payments in lieu of taxes in accordance with the Act.

IN WITNESS WHEREOF, the Commission and the County, by their duly authorized representatives have signed this Agreement as of the date first written above.

WITNESS/ATTEST:

**HOWARD COUNTY HOUSING
COMMISSION**

Leonard S. Vaughan, Secretary

By: _____
Kevin J. Kelehan, Chairman

ATTEST:

HOWARD COUNTY, MARYLAND

Raquel Sanudo
Chief Administrative Officer

By: _____(SEAL)
James N. Robey
County Executive

APPROVED for Form and Legal
Sufficiency: this _____ day
of _____, 2005.

APPROVED for Sufficiency of Funds:

Barbara M. Cook
County Solicitor
O

Sharon F. Greisz, Director
Department of Finance

Exhibit A: Property Description

Exhibit B: Council Resolution No. _____

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EXHIBIT A

Legal description of the 50 Lots to be Listed in Exhibit.

EXHIBIT B

Copy of Council Resolution Approving Form of Agreement